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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,661	02/23/2004	N. David Crow	BIT 203-01	2676
7590 Christopher A. Wiklof 3531 99th St. SE Everett, WA 98208		03/15/2007	EXAMINER LEWIS, RALPH A	
			ART UNIT 3732	PAPER NUMBER
			MAIL DATE 03/15/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

<b>Advisory Action Before the Filing of an Appeal Brief</b>	Application No.	Applicant(s)
	10/785,661	CROW, N. DAVID
	Examiner	Art Unit
	Ralph A. Lewis	3732

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 22 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a)  The period for reply expires 3 months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because

- (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
- (b)  They raise the issue of new matter (see NOTE below);
- (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 1-11, 13-15, 28-40.

Claim(s) objected to:

Claim(s) rejected: 16-18, 22 and 24.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13.  Other: \_\_\_\_\_



Ralph A. Lewis  
Primary Examiner  
AU3732

**Advisory Remarks**

Applicant's amendment of January 22, 2006 has been carefully considered. The rejection of claims 16-24 have been carefully reconsidered.

In the interview of 14 December 2006 applicant asserted that the particularly claimed tab dimensions now set forth in independent claims were "critical" to his invention, yet the remarks accompanying the amendment fail to indicate why such dimensions are "critical" to the invention. Moreover, a through review of the specification provides no explanation as to why the specifically claimed tab dimensions of  $\frac{1}{4}$  inch wide by  $\frac{1}{16}$  inch thick are critical to the invention – e.g. provides for any advantages over a tab dimensioned  $\frac{1}{2}$  inch by  $\frac{1}{4}$  inch or a tab dimensioned 1 inch by  $\frac{1}{3}$  inch. In the applied art, Lustig et al '384 and Lustig '140 a tab is disclosed, but no specific dimensions are given for the tab. One of ordinary skill in the art desiring to practice the Lustig et al '384 invention or the Lustig '140 invention would be required to provide the dimensions for the tabs based on their own knowledge and experience. The examiner, after a through review, is of the position that such a person of ordinary skill in the art would have found the particularly claimed dimensions of  $\frac{1}{4}$  by  $\frac{1}{16}$  for the tab to fall well within a range that such an ordinarily skilled artisan would have found obvious in practicing the Lustig et al and Lustig inventions. The particularly claimed dimensions in and of themselves are insufficient in distinguishing the claimed invention from the prior art.

Additionally with respect to claim 22, the claim is of such a broad construction that it would appear to read on a wooden stick having  $\frac{1}{4}$  inch by  $\frac{1}{16}$  inch dimensions – wherein a front end part of the stick is the body, a middle part of the stick is the undefined receiver, and the rear end of the stick is the tab. The claim is clearly not patentable.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry concerning this communication should be directed to **Ralph Lewis** at telephone number **(571) 272-4712**. Fax (571) 273-8300. The examiner works a compressed work schedule and is unavailable every other Friday. The examiner's supervisor, Cris Rodriguez, can be reached at (571) 272-4964.

R.Lewis  
March 7, 2007



Ralph A. Lewis  
Primary Examiner  
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